

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB - 6 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Request for Comments
for Report to Congress on Universal
Service Under the Telecommunications
Act of 1996

CC Docket No. 96-45
(Report to Congress)

REPLY COMMENTS OF THE INTERNET SERVICE PROVIDERS CONSORTIUM

The Internet Service Providers Consortium ("ISP/C"), through its attorneys, hereby provides to the Federal Communications Commission ("the Commission") its Reply Comments in the above-captioned proceeding.

ISP/C is an international trade association of Internet service providers and other members of the Internet services industry. ISP/C has over 150 members who provide local and backbone Internet access, on-line content, and hardware and software utilized by the industry; ISP/C has members in more than 40 states and ten international countries.. Additional information concerning ISP/C may be found at ISP/C's Web site, located at www.ispc.org.

ISP/C's Reply Comments fall into two areas raised in Comments submitted to the Commission: (1) the current classification of Internet Service Providers is proper and Internet Service Providers should continue to be able (in conjunction with a telecommunications carrier) to participate in E-rate support, and (2) Internet Service Providers are already contributing to the Universal Service Fund and further taxing of the industry would be unsound public policy.

No. of Copies rec'd _____
List A B C D E

0+4

1. **ISPs Are Not Telecommunications Carriers, But Are Properly Able To Participate In The E-Rate Program Under The FCC's Existing Rules.**

A number of commenting parties (*see, e.g.*, Comments of RTC, SBC, LowTech Designs, TDS Telecommunications Corporation, and Aliant Communications Co.) suggest that the Commission has erred in its approach to classifying Internet Service Providers ("ISPs"), and should use this report to Congress to change that policy. ISP/C believes that the Commission's existing rules properly define ISPs as providers of information services, and that no change should be made.¹

Under the 1996 Telecommunications Act, a "telecommunications carrier" is one who provides telecommunications services to the public; "telecommunications services" means "the transmission, between or among point specified by the user, of information of the user's choosing, without change in the form or content of the information as used and sent." 47 U.S.C. § 153 (20). In contrast, "information service" is defined as, "the offering of a capability for generating, acquiring, storing, transferring, processing, retrieving, utilizing, or making available information via telecommunications..." 47 U.S.C. § 153 (46)

The placement of ISPs in the category of information service providers is consistent with both the plain language of the Act and its intended effects. ISPs do not control the transmission of information - users of the Internet make the fundamental decisions about that information they will seek, obtain, and send to others. The paths that such information may follow are not selected or controlled by ISPs; the Internet is accurately referred to as a "network of networks", and the

¹ While these commentators gloss over the issue, it is obvious that the Commission cannot make any substantive change of policy within this proceeding, since this is not a rulemaking proceeding under the Administrative Procedure Act. Any change which the Commission might consider making would have to go through a complete, formal rulemaking process at a subsequent time.

fundamental design of the Internet means that packets of information may take circuitous and indirect routes before they reach their destination. An ISP, sitting at one point on the Internet, cannot dictate or even determine in advance how a specific packet of information will traverse the Internet to or from an end-user.

Further, the Internet is used by an almost unbelievable variety of computer types and systems. A specific textual request for information may be typed into a personal computer by an end-user, converted into packets, be routed onto the Internet by an ISP running completely different mini-computers, be interpreted by a natural-language program running on a mainframe, and return "hits" from Web sites hosted by numerous differing computers literally across the planet. Data maintained on one of those remote computers may be requested by the end-user, transferred across several regional networks and through a national backbone, presented on the end-user's screen, and thus be retrieved by an end-user several time zones away from the site which actually stores the information.

In short, it is hard to imagine a form of electronic activity which more closely matches the statutory verbs - "generating, acquiring, storing, transferring, processing, retrieving, utilizing, or making available information" - than the Internet as it exists and is used today.

Given the legislative distinction set out in the Act, the FCC has properly rejected calls to classify ISPs as telecommunications carriers, and should reject those calls here.

A number of commentors (*see, e.g.*, Comments of GTE, State of Alaska, SBC, USTA, and AT&T) urge the Commission to remove the ability of ISPs to participate in the funding provided under the Commission's E-rate plan for schools and libraries. ISP/C believes the Commission's present approach - permitting ISPs to participate in combination with an eligible telecommunications carrier - is a reasonable compromise between the competing interests of

giving schools the broadest range of options for securing the vital services they need and retaining some symmetry in payments into the Universal Service Fund and access to its benefits.

There cannot be any serious argument that Internet access is a service both needed and desired by schools. The explosive growth in educational resources on the World Wide Web and the demand for access to information to broaden and enrich students' learning experiences make it impossible to exclude Internet access from the collection of services available to schools under the E-rate program. If the commentators who seek to exclude ISPs should prevail in their point of view, schools will lose a large measure of their choice in providers, and local exchange telephone companies will secure a virtual monopoly on Internet access services under the E-rate program.

It is a far better policy to permit ISPs to work with eligible telecommunications carriers to provide the mix of telecommunications and information services needed by schools and to provide those services in an efficient and cost-effective manner. The presence of ISPs in that market serves to restrain the ability of local exchange telephone companies to control Internet access prices, and ensures that E-rate support does not go to providers with inflated charges to the schools.

2. ISPs Are Already Contributing To The Universal Service Fund And Further Taxing Of The Industry Would Be Unsound Public Policy.

There is the suggestion in a number of comments that ISPs do not presently contribute to the Universal Service Fund ("USF"). This is simply not true.

First, as end-users, ISPs pay flat-rate access charges. In addition, ISPs obtain their local exchange services from telecommunications carriers who are the direct funders of the USF. As customers of those carriers, ISPs pay and will continue to pay the amounts which the carriers are obliged to remit to the USAC each month. Carriers are not taking those USF payments out of

their own bottom lines; they are passing every penny on to end-users, and ISPs are paying their full share of those USF amounts.

Requiring ISPs to pay additional amounts into the USF in excess of the amounts they pay through their carriers would be nothing more than placing a tax on one kind of information service. Other providers of information services - credit bureaus, stock price tracking services, agencies providing public records - would not face a similar tax, while ISPs alone would. ISP/C cannot find a persuasive public policy which would be advanced by this change. The general public would be no better off, since their total expenditure for telecommunications services and information services would increase while the amount spent for E-rate support would stay constant under the Commission's determination of school and library needs.

The FCC's policy of letting the information services industry develop unhindered by carrier-type oversight has produced exactly the intended results: a growing industry with numerous competing players and a wide variety of consumer choices. Independent ISPs are already feeling the pinch of carriers bundling their telecommunications services with the provision of Internet access. Placing an additional cost on ISPs will not advance the development of the market, but will make it more likely that consumer choice decreases as carriers secure an ever-increasing share of the market.

CONCLUSION.

The Commission should move forward under its existing policies and rules, and should reject the calls for changes in the classification or treatment of ISPs.

Dated: February 6, 1998.

Respectfully submitted,

LOCKRIDGE GRINDAL
NAUEN & HOLSTEIN P.L.L.P.

By Christopher K. Sandberg/sb
Christopher K. Sandberg

Suite 2200
100 Washington Avenue South
Minneapolis, MN 55401
Telephone: (612) 339-6900
Telecopier: (612) 339-0981

COUNSEL FOR THE INTERNET SERVICE
PROVIDERS CONSORTIUM

CERTIFICATE OF SERVICE

I, Stacy Bloom do hereby certify that on this 6th day of February, 1998, I caused a copy of the foregoing "Reply Comments of the ISP/C" to be hand delivered to the following:

Office of Secretary (1 orig./4 copies)
Federal Communications Commission
1919 M Street N.W.
Washington, DC 20554

Gloria Tristani, Commissioner (1 copy)
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

William E. Kennard, Chairman (1 copy)
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Susan Ness, Commissioner (1 copy)
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Harold Furchtgott-Roth, (1 copy)
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

ITS (1 copy)
1231 20th Street, N.W.
Washington, D.C. 20036

Michael Powell, Commissioner (1 copy)
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Sheryl Todd (1 copy/1 diskette)
Universal Service Branch
Federal Communications Commission
2100 M Street, N.W., 8th Floor
Washington, D.C. 20554

Stacy L. Bloom